# STATE OF MICHIGAN

# COURT OF APPEALS

TRUDY SNOW,

Plaintiff-Appellant,

v

ESTATE OF DUANE WATERS,[1]

Defendant-Appellee.

UNPUBLISHED
April 13, 2006

No. 265461
Hillsdale Circuit Court
LC No. 04-000628-NI

Before: Kelly, P.J., Jansen and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's orders granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), and taxing costs against plaintiff under MCR 2.625. We affirm in part, reverse in part, and remand.

Plaintiff was driving southbound on a two-lane road during the early morning hours. Plaintiff's vehicle veered to the left, crossing over the northbound lane and striking Waters' mailbox on the east side of the road. Plaintiff testified that she had swerved to avoid striking deer. In contrast, the responding sheriff deputy testified that he believed plaintiff had fallen asleep at the wheel.

Plaintiff sued, alleging that Waters had negligently constructed and maintained an unsafe mailbox. The trial court assumed, without deciding, that Waters owed the duty to maintain a reasonably safe mailbox. However, the court granted summary disposition for defendant under MCR 2.116(C)(10), concluding that plaintiff had not established a genuine question of fact regarding factual causation.

We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Summary disposition under MCR 2.116(C)(10) is properly granted when there is no genuine issue of fact and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597

[1] Duane Waters died after plaintiff filed this appeal. We subsequently granted plaintiff's motion to substitute the Estate of Duane Waters as appellee.

NW2d 28 (1999). We consider the pleadings, affidavits, depositions, and other documentary evidence in the light most favorable to the nonmoving party. *Id*. at 454. If the opposing party fails to present sufficient documentary evidence establishing the existence of a material factual dispute, summary disposition is appropriate. *Quinto v Cross & Peters Co*, 451 Mich 358, 363; 547 NW2d 314 (1996).

Because we agree that plaintiff failed to establish a genuine issue of fact with respect to causation, we do not reach the issue of whether Waters owed a duty of care. The elements of actionable negligence are: (1) a duty owed by the defendant to the plaintiff; (2) a breach of that duty; (3) causation; and (4) damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). Causation consists of two separate elements: (1) factual or "but for" cause; and (2) legal or "proximate" cause. *Id*. at n 6. "The cause in fact element generally requires showing that 'but for' the defendant's actions, the plaintiff's injury would not have occurred." *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994). When a plaintiff has failed to sufficiently establish factual causation, it is unnecessary to reach the issue of legal causation. *Id*. In this case, summary disposition was proper because plaintiff failed to create a genuine issue of fact regarding whether Waters' mailbox was the factual cause of her injuries.

The undisputed record evidence in this case showed that plaintiff struck defendant's mailbox, knocking the mailbox off the steel pipe on which it was mounted. Upon striking the mailbox, plaintiff turned the steering wheel back to the right. Soon thereafter, the vehicle crossed over both lanes, striking a tree on the west side of the road. After the accident, the steel pipe was found near where the vehicle had stopped. The evidence is susceptible to two contradictory conclusions.

Plaintiff suggests that upon striking the mailbox, the steel pipe became lodged underneath her vehicle. Plaintiff contends that the steel pipe forced the vehicle's tires to the right, propelling the car across the road and into the tree. Plaintiff's attorney admitted before the trial court that the only evidence supporting this suggested sequence of events was plaintiff's own "personal experience." Despite the lack of evidence, plaintiff's suggested sequence of events is a *possibility*. Although the scenario seems unlikely, the evidence indicates that the pipe was knocked loose from the mailbox and moved or dragged to the west side of the road. While none of the evidence confirms plaintiff's offered theory, none of the evidence expressly refutes this version of events.

In contrast, the evidence also supports the theory that plaintiff caused the vehicle to veer to the right when she turned the steering wheel. Plaintiff admits that she turned the wheel to the right upon striking the mailbox. Plaintiff claims that the steering was not working and that the vehicle's tires must have been turned by some other force. However, the steering mechanism was never inspected, and there is no way of knowing whether the steering was in fact malfunctioning. Moreover, the undisputed evidence shows that the vehicle quickly moved to the right soon after plaintiff turned the wheel. On the basis of his investigation of the accident scene, the responding sheriff deputy testified that it appeared that plaintiff had "overreacted when she hit the mailbox, and [her] first instinct was to pull the vehicle to the right, back onto the roadway." Thus, although the record evidence does not disprove plaintiff's hypothesis, the evidence equally supports this alternate theory of causation.

A plaintiff's evidence of causation "must exclude other reasonable hypotheses with a fair amount of certainty." *Skinner, supra* at 166. A prima facie case of negligence is not established if the proffered evidence of causation lends equal support to inconsistent conclusions or is equally consistent with contradictory hypotheses. *Id*. at 166-167. It is true that plaintiff's offered scenario is a *possibility*. However, "causation theories that are mere possibilities or, at most, equally as probable as other theories do not justify denying a defendant's motion for summary [disposition]." *Id*. at 172-173. In this case, reasonable minds could not have inferred that more probably than not, but for the collision with defendant's mailbox, plaintiff would not have collided with the tree. Plaintiff was required to set forth specific facts that would support a reasonable inference of a logical sequence of cause and effect. *Id*. at 174. Instead, she based her causation theory on a mere possibility, supported largely by her own speculation. Because plaintiff failed to establish a genuine issue of fact with respect to the factual causation of her injuries, summary disposition was properly granted.

Plaintiff also appeals the trial court's order assessing costs and attorney fees. We review a trial court's decision to impose sanctions for clear error. *Schadewald v Brulé*, 225 Mich App 26, 41; 570 NW2d 788 (1997).

Waters' motion for summary disposition contained boilerplate language requesting "costs and reasonable attorney fees." However, neither Waters nor his attorney ever specified the legal authority under which they were seeking costs and fees. Nonetheless, the trial court commented that this action was "wholly frivolous," and purported to grant attorney fees in the amount of $8,115, and costs in the amount of $105, pursuant to MCL 600.2591 and MCR 2.625.

A trial court may grant sanctions for a frivolous action or defense only *upon motion of a party*. MCL 600.2591; MCR 2.625(A)(2). The party must necessarily specify in his motion that he is seeking costs or fees under MCL 600.2591 and MCR 2.625(A)(2). The request for "costs and reasonable attorney fees" in Waters' motion for summary disposition did not reference or even allude to MCL 600.2591 or MCR 2.625, and was therefore insufficient to invoke these provisions. The trial court incorrectly granted sanctions under MCR 2.625 and MCL 600.2591 in the absence of a proper motion.

Unlike MCR 2.625 and MCL 600.2591, MCR 2.114(E) allows a trial court to impose sanctions "on its own initiative." However, before imposing sanctions under MCR 2.114(E), "the trial court must first find that an attorney or party has signed a pleading in violation of MCR 2.114(A)-(D)." *In re Stafford*, 200 Mich App 41, 42; 503 NW2d 678 (1993). The determination of whether an attorney or party has violated the standards of MCR 2.114(A)-(D) "depends largely on the facts and circumstances of the claim." *Id*. The inquiry must focus on the attorney's objectively manifested actions. See *Lloyd v Avadenka*, 158 Mich App 623, 630; 405 NW2d 141 (1987). That alleged facts are later discovered to be untrue does not invalidate a prior reasonable inquiry. *Attorney General v Harkins*, 257 Mich App 564, 576; 669 NW2d 296 (2003). Any inquiry into whether the requirements of MCR 2.114(A)-(D) were violated requires that the trial court make findings of fact. *Contel Systems Corp v Gores*, 183 Mich App 706, 711; 455 NW2d 398 (1990).

Because Waters' motion was insufficient to invoke MCL 600.2591 and MCR 2.625, the trial court in effect granted sanctions *on its own initiative*. MCR 2.114(E). The court, however, made no findings of fact; rather, it simply commented that "[t]here is no legal basis under the

facts of this case for this case to even be here." We, therefore, remand for specific findings with respect to whether plaintiff or plaintiff's attorney violated MCR 2.114(A)-(D), and whether sanctions are required under MCR 2.114(E). See *In re Forfeiture of Cash & Gambling Paraphernalia*, 203 Mich App 69, 73; 512 NW2d 49 (1993).

Affirmed in part, reversed in part, and remanded for factual findings under MCR 2.114 to support the trial court's award of sanctions. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Kathleen Jansen
/s/ Michael J. Talbot